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JERRY RICHARD POTTS 3248 VIA RIBERA ESCONDIDO, CA 92029			PAYNE, SHARON E	
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			2875	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

CA

<b>Office Action Summary</b>	<b>Application No.</b> 10/664,186	<b>Applicant(s)</b> MENOSKY, PETER	
	<b>Examiner</b> Sharon E. Payne	<b>Art Unit</b> 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0104</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gun barrel (claims 3 and 17) and the laser pen housing (claims 5 and 19) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

3. Claims 1-5 are objected to because of the following informalities: the phrase "a least" should be "at least" in line 10 of claim 1.

4. Claims 6-19 are objected to because of the following informalities: 1) the phrase "a upper" should be "an upper" in line 2 of claim 6; 2) the phrase "said plurality of devices" should be "a plurality of devices" in lines 1-2 of claim 9; 3) the word "claim11" should be "claim 11" in line 1 of claim 13; and the phrase "a least" should be "at least" in line 4 of claim 14. (In the alternative claim 9 should depend on claim 8.)

5. Claims 26-28 are objected to because of the following informality: the phrase "a opening" should be "an opening" in line 4 of claim 26.

6. Claims 2-5, 7-8, 10-13, 15-19 and 27-28 are necessarily included due to their dependency. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. Claims 1-5 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 1 and 14 are indefinite for reciting the limitation "and for partially spacing them one from the other along a [sic] least a portion of their respective longitudinal axes." What is

meant by this phrase? For purposes of writing this office action, it is assumed that the applicant is referring to the configuration of Fig. 5.

9. Claims 2-5 are necessarily included due to their dependency.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 6, 7, 14, 15, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Eross (U.S. Patent 3,747,166).

Regarding claim 6, Eross discloses a hose holder. The holder includes a support apparatus having an upper support member (reference number 10) with an expandable opening (column 2, lines 10-16) having a width of dimension d (Fig. 1) and a lower support member (reference number 11) with another expandable opening (column 2, lines 10-16) having another width dimension of D (Fig. 2), wherein the upper support member and the lower support member are secured together for free rotational movement relative to one another (Figs. 1 and 3) wherein the width dimension d corresponds to the radius dimension of a tubular member (Fig. 3, reference number 17), wherein the width dimension D corresponds to the radius dimension of another tubular member (Fig. 3, reference number 18) and wherein the support apparatus is adapted to be secured to the tubular member (Fig. 3).

Concerning claim 7, Eross discloses the upper support member and the lower support member being secured together by a rivet (column 2, lines 1-4).

Regarding claim 14, as best understood, Eross discloses the rivet securing the lower support member to the upper support member in a back to back configuration for free rotational movement relative to one another (Figs. 1 and 3) and for partially spacing them one from another along at least a portion of their respective longitudinal axes (Fig. 3).

Concerning claim 15, Eross discloses the support apparatus being further adapted to be secured to another tubular member (Fig. 3).

Regarding claim 20, Eross discloses the steps of providing a mounting kit having a support apparatus (Fig. 1), the support apparatus including an upper support member (reference number 10) and a lower support member (reference number 11), attaching the lower support member to another tubular member (Fig. 3) and attaching the upper support member to the tubular member (Fig. 3).

Concerning claim 21, Eross discloses the upper support member and the lower support member being each elongated U-shaped channel members (Fig. 1) and are pivotally mounted to one another at about their geometric centers for rotational movement relative to one another (Fig. 3).

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 2, 4, 8-13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Miree (U.S. Patent 4,541,555).

Regarding claim 1, as best understood, Eross discloses a tube engaging member (reference number 10) having an elongated U-shaped channel (Figs. 1 and 3), the channel being dimensioned to snugly engage a tubular member (Fig. 3), another tube engaging member (reference number 11) having another elongated U-shaped channel (Figs. 1 and 3), the another channel being dimensioned to snugly engage another tubular member (Fig. 3), a rivet (column 2, lines 1-4) for securing the tube engaging member and another tube engaging member in a back to back configuration for free rotational movement relative to one another (Fig. 3) and for partially spacing them one from the other along at least a portion of their respective longitudinal axes (Fig. 3). Eross does not disclose the straps.

Miree discloses a strap for removably securing the tube engaging member to the tubular member (reference number 50, Fig. 2).

Providing a plurality of straps for removably securing the tube engaging member to the tubular member is considered to be an obvious duplication of parts. Since the strap is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a plurality of straps, shown in the Miree reference, in the Eross reference for securing the tubular member more tightly to the apparatus.

Providing a plurality of the straps shown in the Miree reference in the Eross reference for removably securing another tubular member to another tube engaging member is considered to be an obvious duplication of parts. Since the strap is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the strap shown in the Miree reference in the apparatus of Eross for securing another tubular member to another tube engaging member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the strap of Miree in the apparatus of Eross for removably securing the tubular member to the support. See Fig. 2 of Miree.

Regarding claim 2, Eross does not specifically disclose a handlebar. Miree discloses the tubular member as a handlebar (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the handlebar of Miree with the apparatus of Eross for attaching a flashlight to the bicycle so that a person can see at night while riding a bicycle. See Fig. 2 of Miree.

Concerning claim 4, Eross does not specifically disclose a flashlight housing. Miree discloses another tubular member as a flashlight housing (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flashlight of Miree with the apparatus of Eross so that one can attach a flashlight to another apparatus, such as a bicycle, so that one can use the apparatus and see without having to manipulate the flashlight. See Fig. 2 of Miree.

Regarding claim 8, Eross does not disclose a device for securing the support apparatus to a tubular member. Miree discloses a device for securing the support apparatus to a tubular member (reference number 50).

Providing a plurality of such devices is considered to be an obvious duplication of parts. Since the device for securing is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a plurality of the devices to secure more tightly the tubular member to the support apparatus.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the device (strap) of Miree in the apparatus of Eross for more securely attaching the tubular member to the support apparatus. See Fig. 2 of Miree.



Concerning claim 9, Eross does not disclose a tie strap. Miree discloses the device as a tie strap (reference number 50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of the tie straps shown in Miree in the apparatus of Eross for more securely attaching the support apparatus to the tubular member. See Fig. 2 of Miree.

Regarding claim 10, Eross does not disclose a pad with hooks and another pad with piles. Miree discloses the device comprising a pad with a plurality of hooks (column 3, lines 60-68) and at least another pad with a plurality of piles (column 3, lines 60-68).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a plurality of straps with hooks and piles, an example of which is shown in Miree, in the apparatus of Eross to more securely attach the tubular member to the support apparatus. See Fig. 2 of Miree.

Concerning claim 11, Eross does not disclose another plurality of devices for securing the support apparatus to another tubular member. Miree discloses a device (reference number 50) for securing the support apparatus to another tubular member (Fig. 1).

Providing another plurality of the devices shown in Miree is considered to be an obvious duplication of parts. Since the device for securing is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use another plurality of the devices shown in Miree in the apparatus of Eross for more securely attaching another tubular member to the support apparatus. See Fig. 2 of Miree.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the device of Miree in the apparatus of Eross for more securely tying down another tubular member to the support apparatus.

Regarding claim 12, Eross does not disclose another plurality of tie straps. Miree discloses a tie strap (reference number 50).

Providing another plurality of the tie straps shown in Miree is considered to be an obvious duplication of parts. Since the device for securing is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use another plurality of the tie straps shown in Miree in the apparatus of Eross for more securely attaching another tubular member to the support apparatus. See Fig. 2 of Miree.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the tie strap of Miree in the apparatus of Eross for more securely tying down another tubular member to the support apparatus.

Concerning claim 13, Eross does not disclose another plurality of devices having another plurality of pads with at least one pad having a plurality of hooks and at least another pad having a plurality of piles. Miree discloses a device with at least one pad with a plurality of hooks (column 3, lines 60-68) and at least another pad with a plurality of piles (column 3, lines 60-68).

Providing another plurality of the devices shown in Miree is considered to be an obvious duplication of parts. Since the device for securing is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use another plurality of the devices shown in Miree in the apparatus of Eross for more securely attaching another tubular member to the support apparatus. See Fig. 2 of Miree.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the device of Miree in the apparatus of Eross for more securely tying down another tubular member to the support apparatus.

Regarding claim 16, Eross does not specifically disclose a handlebar. Miree discloses the tubular member as a handlebar (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the handlebar of Miree in the apparatus of Eross to attach a flashlight to a bicycle so that a person could see while riding in the dark. See Fig. 2 of Miree.

Concerning claim 18, Eross does not disclose a flashlight housing. Miree discloses another tubular member as a flashlight housing (reference number 13, Figs. 1 and 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flashlight of Miree with the apparatus of Eross to enable one to tie a light source to an apparatus, such as a bicycle, so that one can see without having to manipulate the flashlight and so that one can take the flashlight off the apparatus when not riding the bicycle.

14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Miree as applied to claim 1 above, and further in view of Mosteller (U.S. Patent 933,095).

Regarding claim 3, Eross does not disclose a gun barrel. Mosteller discloses a gun barrel (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the gun barrel of Mosteller with the apparatus of Eross to enable one to shoot what one sees.

15. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Miree as applied to claim 1 above, and further in view of Maes et al. (U.S. Patent 4,926,438).

Regarding claim 5, Eross does not disclose a laser pen housing. Maes et al. discloses a laser pen housing (reference number 2).

It would have been obvious to one of ordinary skill in the art to use the laser pen of Maes et al. in the apparatus of Eross and Miree to shine a light on a target while using another apparatus, such as a weapon. See column 1, lines 1-2, of Maes et al.

16. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Mosteller.

Regarding claim 17, Eross does not disclose a gun barrel. Mosteller discloses a gun barrel (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the gun barrel of Mosteller with the apparatus of Eross to enable one to shoot what one sees.

17. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Maes et al.

Regarding claim 19, Eross does not disclose a laser pen housing. Maes et al. discloses a laser pen housing (reference number 2).

It would have been obvious to one of ordinary skill in the art to use the laser pen of Maes et al. in the apparatus of Eross to shine a light on a target while using another apparatus, such as a weapon. See column 1, lines 1-2, of Maes et al.

18. Claims 22, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Griggs et al. (U.S. Patent 4,176,770).

Regarding claim 22, Eross does not disclose a tie strap. Griggs discloses wrapping an elongated tie strap (reference number 5) having a tail end portion (reference number 28) and a cinch end portion (reference number 36) around another tubular member (the handlebar, Fig. 1) and the lower support member (reference number 11, Figs. 1 and 5) and cinching the tail end portion through the cinch end portion to secure them together mounting the lower support member to another tubular member (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the tie straps of Griggs in the apparatus of Eross to more securely tie the apparatus to another tubular member. See Fig. 1 of Griggs.

Concerning claim 23, Eross does not disclose a tie strap. Griggs discloses wrapping an elongated tie strap (reference number 5) having a tail end portion (reference number 28) and a cinch end portion (reference number 36) around the tubular member (the bottle) and the upper support member (reference number 2, Figs. 1 and 5) and cinching the tail end portion through the cinch end portion to secure them together mounting the lower support member to the tubular member (Fig. 1).

Providing another strap is considered to be an obvious duplication of parts. Since the strap is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use provide another strap like the one disclosed in Griggs in the apparatus of Eross for more securely tying the apparatus to the tubular member. See Fig. 1 of Griggs.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the tie straps of Griggs in the apparatus of Eross to more securely tie the apparatus to the tubular member. See Fig. 1 of Griggs.

Regarding claim 25, Eross does not specifically disclose a handlebar. Griggs discloses another tubular member as a handlebar (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the handlebar of Griggs with the apparatus of Eross to attach something to a bicycle or motorcycle so that one can steer without manipulating the article. See Fig. 1 of Griggs.

19. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eross and Griggs as applied to claim 23 above, and further in view of Miree.

Regarding claim 24, Eross does not disclose a flashlight housing. Miree discloses the tubular member as the flashlight housing (Figs. 1 and 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flashlight of Miree with the apparatus of Eross to enable one to tie on a light source to an apparatus so that one can see and steer without manipulating the apparatus. See Fig. 2 of Miree.

20. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Davis (U.S. Patent 4,170,337).

Regarding claim 26, Eross discloses providing a mounting kit having a support apparatus (Fig. 3), the support apparatus including an upper support member (reference number 10) with an opening having a width dimension of  $d$  (Fig. 1) and a lower support member (reference number 11) with another opening having another width dimension of  $D$  (Fig. 1) and wherein the upper support member and the lower support member are secured together for free rotational movement relative to one another (Figs. 1 and 3), pressing the opening of the lower

support member onto the tubular member with sufficient force to cause the lower support member to wrap partially around the tubular member in a snug friction tight fix (Fig. 3, lower tube, and column 2, lines 10-16) and pressing the opening of the upper support member onto an apparatus with sufficient force to cause the upper support member to wrap partially around the apparatus in a snug friction tight fix (Fig. 3, upper tube, and column 2, lines 10-16). Eross does not disclose the lantern on the upper support member.

Davis discloses the lantern (reference number 16) in the opening of the upper support member (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flashlight (lantern) of Davis with the apparatus of Eross to enable one to see in the dark without having to manipulate the flashlight. See Fig. 1 of Davis.

Concerning claim 27, Eross discloses the width dimension d and the width dimension D being equal (Fig. 1).

Regarding claim 28, Eross does not disclose the width dimension d and the width dimension D being unequal.

Making the two widths unequal is considered to be an obvious variation. Since the making the opening a certain width is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the widths unequal to accommodate different sized tubes, because changes in size involve only routine skill in the art. See M.P.E.P. 2144.04.

21. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eross in view of Miree as applied to claim 1 above, and further in view of Adler (U.S. Patent 2,215,283).

Regarding claim 29, Eross does not disclose an elongated cushion. Adler discloses an elongated cushion (reference character E) for mounting within the elongated U-shaped channel to facilitate friction engagement with the tubular member (Fig. 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the cushion of Adler in the apparatus of Eross to get "a much higher degree of clamping action" (column 1, lines 35-36, of Adler).

Concerning claim 30, Eross does not disclose a hook and pile member. Miree discloses a hook and pile member (column 3, lines 60-68) for helping to mount another tubular member within another U-shaped channel (Figs. 1 and 2).

Providing a plurality of hook and pile members is considered to be an obvious duplication of parts. Since the hook and pile members (VELCRO strips) are well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of hook and pile members to more securely fasten another tubular member within the U-shaped channel (Fig. 2 of Miree).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the hook and pile member of Miree in the apparatus of Eross to fasten another tubular member into the support apparatus. See Fig. 2 of Miree.

### ***Conclusion***

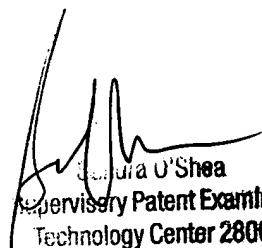
22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Payne whose telephone number is (571) 272-2379. The examiner can normally be reached on regular business hours.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sep



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